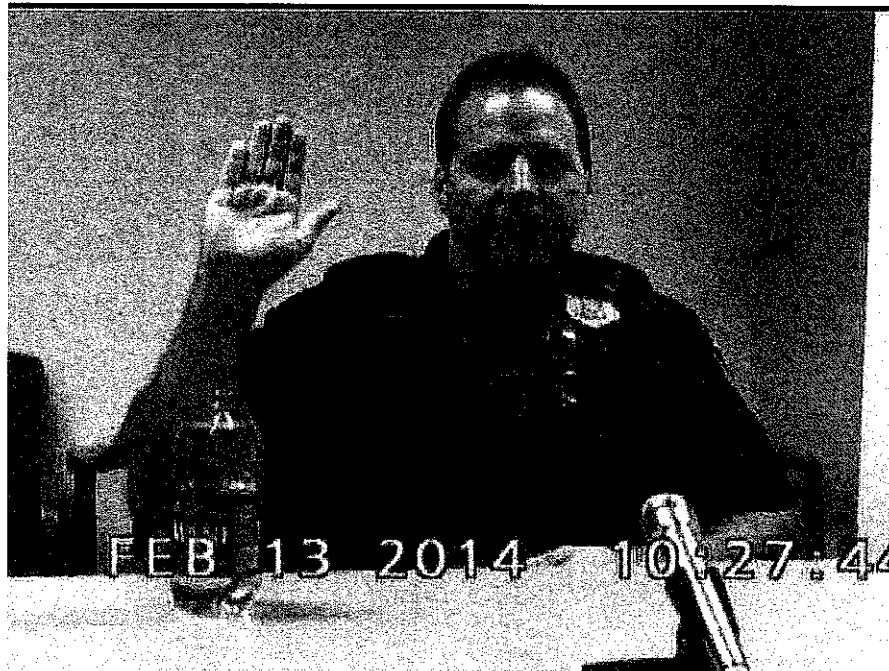


United States District Court
Eastern District of Wisconsin

Estate of Perry v. Wenzel
12-CV-664



Video Deposition of

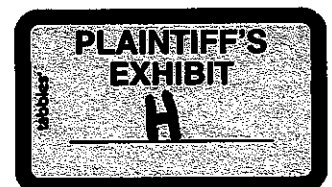
Rick Bungert

Recorded 02/13/2014 in Milwaukee, WI

10:27 am - 11:31 am, 60 mins. elapsed

Magne-Script

(414) 352-5450



20342 Condensed transcript with index

Video Deposition of Rick Bungert 2/13/2014

1 (Pages 1 to 4)

<p style="text-align: center;">Page 1</p> <p>Witness Rick Bungert</p> <p>Thursday 02/13/2014 at 10:15 by: Claire Ziffer</p> <p>Milwaukee City Attorneys Office 841 N. Broadway #716 Milwaukee, WI 53202</p> <p>Estate of Perry v. Wenzel 12-CV-664 United States District Court Eastern District of Wisconsin</p>	<p style="text-align: center;">Page 3</p> <p>1 Michael L. Johnson 2 Otjen, Gendelman, Zitzer, Johnson & Weir, S.C. 3 20935 Swenson Dr. #310 4 Waukesha, WI 53186 5 On behalf of Aurora Healthcare Metro, Inc. 6 7 Mark E. Larson 8 Gutglass, Erickson, Bonville & Larson 9 735 N. Water St. #1400 10 Milwaukee, WI 53202-4267 11 On behalf of Paul Coogan, M.D. 12 13 Patrick D. McNally 14 Borgelt, Powell, Peterson & Frauen, S.C. 15 735 N. Water St. #1500 16 Milwaukee, WI 53202 17 On behalf of Injured Patients and Families Compensation 18 Fund 19 20 21 22 23 24 25</p>
<p style="text-align: center;">Page 2</p> <p>1 APPEARANCES 2 James J. Gende 3 Gende Law Office, S.C. 4 N28 W23000 Roundy Dr. 5 Pewaukee, WI 53072 6 On behalf of the Plaintiffs 7 8 Christopher P. Katers 9 Judge, Lang & Glynn, S.C. 10 8112 W. Bluemound Rd. #71 11 Milwaukee, WI 53213 12 On behalf of the Plaintiffs 13 14 Andrew A. Jones 15 Whyte Hirschboeck Dudek S.C. 16 555 E. Wells St. #1900 17 Milwaukee, WI 53202 18 On behalf of the Milwaukee County Defendants 19 20 Susan E. Lappen 21 Milwaukee City Attorneys Office 22 841 N. Broadway #716 23 Milwaukee, WI 53202 24 On behalf of the City of Milwaukee Defendants 25</p>	<p style="text-align: center;">Page 4</p> <p>1 INDEX 2 EXAMINATION BY PAGE NO. 3 Mr. Gende 4 4 (There were no exhibits marked) 5 (The sealed original transcript was sent to Mr. Gende) 6 7 EXAMINATION 8 BY MR. GENDE: 9 Q Sir, please state your name and spell your last name 10 for the record. 11 A My name is Rick A. Bungert. Last name, B-u-n-g-e-r-t. 12 Q Officer Bungert, I'm going to ask you a series of 13 questions as it relates to Mr. Perry and his in- 14 custody death. If you don't understand my question, 15 please tell me so and I'll attempt to rephrase it in a 16 manner that's more clear; is that fair? 17 A Yes. 18 Q If you answer my question, I will assume that you 19 understood it. Okay? 20 A Yes. 21 Q Please allow me to ask my entire question before you 22 attempt to answer so that we may keep the record 23 clear. Fair enough? 24 A Sure. Yes. 25 Q Give me a brief overview of your educational</p>

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2 (Pages 5 to 8)

Page 5	Page 7
<p>1 background, please?</p> <p>2 A Graduated high school, two years of college, a little</p> <p>3 bit of community college, the Air Force.</p> <p>4 Q When did you graduate high school?</p> <p>5 A 1986.</p> <p>6 Q And the community colleges that you attended?</p> <p>7 A 1991.</p> <p>8 Q And when were you appointed to the Milwaukee Police</p> <p>9 Department?</p> <p>10 A 1996.</p> <p>11 Q In between '91 and '96, can you give me a brief</p> <p>12 overview of your employment background?</p> <p>13 A I drove truck for a concrete company. Actually, I</p> <p>14 went to WCTC for two years, drove a dump truck for a</p> <p>15 while, worked at a hotel, various jobs.</p> <p>16 Q What have been your assignments since you were</p> <p>17 appointed to the Milwaukee Police Department?</p> <p>18 A Police officer.</p> <p>19 Q And doing what type of duties?</p> <p>20 A Patrol.</p> <p>21 Q What was your assignment on September 13th, 2010?</p> <p>22 A Assist officers with a combative subject.</p> <p>23 Q Were you assigned to the Prisoner Processing Section</p> <p>24 at that time?</p> <p>25 A No.</p>	<p>1 A Yes.</p> <p>2 Q Who was your partner?</p> <p>3 A Officer Santiago.</p> <p>4 Q How long had you and Officer Santiago been partners</p> <p>5 for?</p> <p>6 A Maybe six months to a year.</p> <p>7 Q When you received the call that you were to assist</p> <p>8 with a combative prisoner, do you know who made that</p> <p>9 call?</p> <p>10 A No, I don't.</p> <p>11 Q Did they provide you any additional information as to</p> <p>12 Mr. Perry's status?</p> <p>13 A Not that I recall.</p> <p>14 Q What did you first observe when you arrived at PPS and</p> <p>15 saw Mr. Perry?</p> <p>16 A I observed Mr. Perry being restrained by two officers</p> <p>17 before we got on the elevator in the garage, but I</p> <p>18 can't remember if he was standing or laying down.</p> <p>19 It's been three and a half years. I don't exactly</p> <p>20 remember the details.</p> <p>21 Q So you arrived in the garage in your squad, correct?</p> <p>22 A Yes. I believe so.</p> <p>23 Q And did you recognize the two officers that were</p> <p>24 dealing with Mr. Perry at the time?</p> <p>25 A Yes.</p>
Page 6	Page 8
<p>1 Q You were called off patrol to come to PPS?</p> <p>2 A Yes.</p> <p>3 Q Do you recall any other events of that evening other</p> <p>4 than your call to PPS to assist with Mr. Perry?</p> <p>5 A No.</p> <p>6 Q Do you recall what time of the evening you arrived at</p> <p>7 PPS?</p> <p>8 A Right around 6:30.</p> <p>9 Q By the way, did you review any documents in</p> <p>10 preparation for your deposition here today?</p> <p>11 A I reviewed -- I reviewed with Sue Lappen. Other than</p> <p>12 that, documents? No.</p> <p>13 Q Did you provide any statements regarding what you</p> <p>14 observed on the evening in question?</p> <p>15 A Internal Affairs asked me a series of questions.</p> <p>16 Q That would have been after the lawsuit was filed?</p> <p>17 A I don't know when the lawsuit was filed.</p> <p>18 Q When did Internal Affairs ask you a series of</p> <p>19 questions?</p> <p>20 A Maybe about six months ago, a year, something like</p> <p>21 that.</p> <p>22 Q Okay. We'll come back to that. When you arrived at</p> <p>23 PPS, did you observe Mr. Perry?</p> <p>24 A Yes.</p> <p>25 Q Did you have a partner with you that evening?</p>	<p>1 Q Who were they?</p> <p>2 A Officer Kroes and Officer Jacks.</p> <p>3 Q And when you first observed those three individuals,</p> <p>4 were they outside of the squad car?</p> <p>5 A I believe so.</p> <p>6 Q And tell me what you recall of that observation.</p> <p>7 A Where we place our guns in a locker, I believe they</p> <p>8 were standing there, but I don't know if Mr. Perry was</p> <p>9 standing or laying down. I just remember them holding</p> <p>10 him basically in that corner, waiting for us.</p> <p>11 Q When you first observed Mr. Perry, what physically did</p> <p>12 you observe about him?</p> <p>13 A It's hard to remember. Nothing unusual.</p> <p>14 Q Do you recall him being cuffed at his arms?</p> <p>15 A Yes. I believe he was --</p> <p>16 Q Do you recall him --</p> <p>17 A I believe he was cuffed.</p> <p>18 Q Do you recall him being cuffed at his legs?</p> <p>19 A I don't remember.</p> <p>20 Q Do you recall him requiring assistance to stand?</p> <p>21 A No.</p> <p>22 Q Once you got to the garage, did you immediately</p> <p>23 approach Kroes and Jacks and provide assistance?</p> <p>24 A Yes.</p> <p>25 Q Did you have any discussion with Mr. Perry at that</p>

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3 (Pages 9 to 12)

<p style="text-align: center;">Page 9</p> <p>1 time?</p> <p>2 A I don't remember.</p> <p>3 Q Did Kroes or Jacks explain to you that Mr. Perry was</p> <p>4 being returned from a medical conveyance?</p> <p>5 A I don't remember exactly what they said, but I believe</p> <p>6 I was told. It's been three and a half years. I</p> <p>7 don't remember exactly what they said to me.</p> <p>8 Q Generally, what do you recall them saying?</p> <p>9 A I remember the hitch coming over as I thought it was a</p> <p>10 combative subject, and they're restraining him</p> <p>11 basically in the corner. I don't know the positioning</p> <p>12 or anything like that. I don't remember what he said.</p> <p>13 But it took me a while to even think of what part I</p> <p>14 played in this whole role because it's been so long.</p> <p>15 It's hard to quote or explain exactly what I did</p> <p>16 because I don't remember it.</p> <p>17 Q Okay. Let's focus on the question at hand, which is:</p> <p>18 what, if anything, do you recall Kroes or Jacks</p> <p>19 explaining to you about Mr. Perry's medical</p> <p>20 conveyance?</p> <p>21 A I don't remember.</p> <p>22 Q Did you observe Mr. Perry to be in a state of</p> <p>23 distress?</p> <p>24 A Not that I recall, no.</p> <p>25 Q Did you observe him being combative?</p>	<p style="text-align: center;">Page 11</p> <p>1 Q Was his head up or down?</p> <p>2 A Well, if it was down, I'd remember that, so I would</p> <p>3 say it was up.</p> <p>4 Q Do you recall observing any blood anywhere on his body</p> <p>5 or face?</p> <p>6 A No.</p> <p>7 Q His clothing?</p> <p>8 A No, because that would -- If I saw blood on something,</p> <p>9 I would put gloves on. I would be a lot more</p> <p>10 cautious, so I would say no.</p> <p>11 Q Did you observe any urine or feces on Mr. Perry at</p> <p>12 that time?</p> <p>13 A No.</p> <p>14 Q Did you smell any?</p> <p>15 A Not that I remember.</p> <p>16 Q Do you recall Kroes or Jacks telling you that Mr.</p> <p>17 Perry had either urinated or defecated on himself?</p> <p>18 A No.</p> <p>19 Q When you were assisting Mr. Perry to the elevator, was</p> <p>20 he able to walk on his own?</p> <p>21 A I don't think so. And the reason I say that is</p> <p>22 because I saw a clip on the news, and I think we were</p> <p>23 carrying him, but I'm not -- I don't actually remember</p> <p>24 the actions.</p> <p>25 Q Other than seeing the video on the news which showed</p>
<p style="text-align: center;">Page 10</p> <p>1 A He was -- I know he was jerking his arms around and</p> <p>2 trying to move around a lot, but it's hard to</p> <p>3 remember.</p> <p>4 Q This was the moment before he was taken to the</p> <p>5 elevator up to PPS?</p> <p>6 A Yes.</p> <p>7 Q All right. Did Kroes and Jacks tell you that they'd</p> <p>8 had any difficulty with Mr. Perry --</p> <p>9 A I believe they did, but I don't remember what exactly</p> <p>10 they said.</p> <p>11 Q I don't need to know exactly. I want to know what</p> <p>12 your best recollection is.</p> <p>13 A I don't remember.</p> <p>14 Q Okay. Tell me how you assisted in moving Mr. Perry</p> <p>15 from the garage to the elevator.</p> <p>16 A I believe I was -- I believe I was on one of his</p> <p>17 shoulders, and we went on the elevator, and we just</p> <p>18 held him so he didn't flail around.</p> <p>19 Q Did he try to kick anyone that you saw?</p> <p>20 A I don't remember.</p> <p>21 Q Did he try and spit on anyone that you saw?</p> <p>22 A I don't remember.</p> <p>23 Q Do you recall him saying anything while you were</p> <p>24 assisting him to the elevator?</p> <p>25 A No.</p>	<p style="text-align: center;">Page 12</p> <p>1 Mr. Perry being carried once he was in PPS, you don't</p> <p>2 recall whether or not he had to be carried while he</p> <p>3 was in the garage and going to the elevator.</p> <p>4 A I don't remember.</p> <p>5 Q Were you advised by Kroes and Jacks that Mr. Perry's</p> <p>6 medical emergency earlier in the evening had been a</p> <p>7 seizure where he had struck his head?</p> <p>8 A No.</p> <p>9 Q Did you ever become aware of that information?</p> <p>10 A No.</p> <p>11 Q As you were riding up in the elevator, was Officer</p> <p>12 Santiago assisting in any way as it relates to Mr.</p> <p>13 Perry?</p> <p>14 A I know there were four of us on the elevator. We all,</p> <p>15 I think, had a spot that we would try to control him,</p> <p>16 or like a leg or an arm or shoulder or something to</p> <p>17 try to control him.</p> <p>18 Q Did Mr. Perry appear to be coherent at the time?</p> <p>19 A I don't remember.</p> <p>20 Q Do you recall anything that Mr. Perry may have said to</p> <p>21 you or any other officer from the moment you</p> <p>22 approached him in the garage until the moment you got</p> <p>23 up the elevator and walked into PPS?</p> <p>24 A I remember him yelling and -- yelling. And I just</p> <p>25 said, "Hey, you have to behave, you have to be good."</p>

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4 (Pages 13 to 16)

<p style="text-align: center;">Page 13</p> <p>1 I don't remember exactly what he said.</p> <p>2 Q Was he yelling something intelligible or was he</p> <p>3 calling out for help? What do you generally</p> <p>4 understand in that regard?</p> <p>5 A I don't remember him calling for help. I just -- I</p> <p>6 don't know if -- I don't remember if he was calling us</p> <p>7 derogatory comments. I just remember, "Hey, you got</p> <p>8 to just calm down, just be" -- I was just trying to</p> <p>9 calm him down.</p> <p>10 Q Were you successful in that regard?</p> <p>11 A I don't know if there were periods he seemed to be</p> <p>12 better. He seemed coherent. I think if I said</p> <p>13 something, he didn't seem like he had some off-the-</p> <p>14 wall answer. But all I -- I remember just saying,</p> <p>15 "Hey, you have to behave, just calm down." But I</p> <p>16 don't remember exactly what he said to me.</p> <p>17 Q Did you inquire of Kroes or Jacks how Mr. Perry had</p> <p>18 been combative, if at all, earlier in the evening?</p> <p>19 A Did I inquire?</p> <p>20 Q Yes.</p> <p>21 A I believe so.</p> <p>22 Q And what do you recall them saying, if anything?</p> <p>23 A I think they said that they had him at the hospital</p> <p>24 and he was combative. But do I remember the exact</p> <p>25 quotes? No.</p>	<p style="text-align: center;">Page 15</p> <p>1 hurt himself. I believe I was behind him, but it's</p> <p>2 hard to remember that exact, if I was or not. I</p> <p>3 believe that's where I was.</p> <p>4 Q Other than seeing the video of Mr. Perry at PPS and</p> <p>5 subsequently at CJF, have you reviewed that video at</p> <p>6 any other time?</p> <p>7 A No. I reviewed with Sue just bits of it. I don't</p> <p>8 think I reviewed the view that was actually in that</p> <p>9 corner.</p> <p>10 Q What portions of the video did you review with Ms.</p> <p>11 Lappen?</p> <p>12 A There was one from the outside from the hallway, from</p> <p>13 the elevators, and there's a door, and I could hear</p> <p>14 some comments.</p> <p>15 Q What comments did you hear?</p> <p>16 A I could hear my voice and I thought I said, "Behave,"</p> <p>17 things of that order. Something about like, "Behave,</p> <p>18 calm down," or, "Behave."</p> <p>19 Q At some point, Mr. Perry was put into cell A3,</p> <p>20 correct?</p> <p>21 A I know a cell but I don't know which number.</p> <p>22 Q Had you ever been to PPS before that evening?</p> <p>23 A That evening, I don't believe so.</p> <p>24 Q Were you by Mr. Perry --</p> <p>25 MS. LAPPEN: Just for clarification, I think</p>
<p style="text-align: center;">Page 14</p> <p>1 Q Do you recall having any further discussion with Kroes</p> <p>2 or Jacks in that regard?</p> <p>3 A No.</p> <p>4 Q How much time elapsed from when you arrived in the</p> <p>5 garage until Mr. Perry was transported up to PPS?</p> <p>6 A A few minutes.</p> <p>7 Q Were you aware of any paperwork problems that existed</p> <p>8 with Mr. Perry that prevented him from being taken</p> <p>9 directly to CJF?</p> <p>10 A I think it was said. I believe that's why -- because</p> <p>11 -- I believe so. It's hard to remember exactly.</p> <p>12 Q What's your recollection? Did you understand that</p> <p>13 when you were called to assist with a combative</p> <p>14 prisoner, when you arrived at the garage, when you</p> <p>15 stepped into PPS? Tell me your best recollection.</p> <p>16 A I don't remember.</p> <p>17 Q Were you advised how long you were to remain with Mr.</p> <p>18 Perry?</p> <p>19 A No.</p> <p>20 Q Once you entered PPS, what's the next thing you</p> <p>21 recall?</p> <p>22 A I remember we -- there's a booking -- there's a</p> <p>23 booking long chair, and I remember -- I thought I had</p> <p>24 -- I thought I had put my shins against his back so he</p> <p>25 couldn't move around, so he couldn't hurt anybody or</p>	<p style="text-align: center;">Page 16</p> <p>1 he misunderstood.</p> <p>2 Do you mean -- when he asked you if you had</p> <p>3 been there before, did you --</p> <p>4 BY MR. GENDE:</p> <p>5 Q Had you -- Had you --</p> <p>6 MS. LAPPEN: Did you mean that evening or</p> <p>7 ever before?</p> <p>8 BY MR. GENDE:</p> <p>9 Q I'm talking about --</p> <p>10 A That evening.</p> <p>11 Q No. I'm talking about in your career had you been to</p> <p>12 PPS before?</p> <p>13 MS. LAPPEN: Yeah.</p> <p>14 A Oh, yes.</p> <p>15 BY MR. GENDE:</p> <p>16 Q Okay.</p> <p>17 A I thought you meant that evening.</p> <p>18 Q So you're familiar with the layout, correct?</p> <p>19 A Yes.</p> <p>20 Q All right.</p> <p>21 A Yes.</p> <p>22 Q Did you leave Mr. Perry's side at any point in time</p> <p>23 before he was put into cell A3, from the moment you</p> <p>24 arrived in the garage until the moment the door was</p> <p>25 closed on A3?</p>

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5 (Pages 17 to 20)

<p style="text-align: center;">Page 17</p> <p>1 A Not to my knowledge.</p> <p>2 Q Is it fair to say that as a responding officer to</p> <p>3 assist with a combative or allegedly combative inmate,</p> <p>4 it was your duty and responsibility to stay by Mr.</p> <p>5 Perry until relieved of that duty?</p> <p>6 A I guess it depends how combative, but I don't remember</p> <p>7 leaving him.</p> <p>8 Q Well, do you recall Mr. Perry being combative once he</p> <p>9 was in PPS?</p> <p>10 A Yes.</p> <p>11 Q And tell me what you recall in that regard.</p> <p>12 A He was pulling his arms away from us when we were</p> <p>13 trying to control him, moving around. We were just</p> <p>14 telling him to calm down, and he just didn't seem to</p> <p>15 respond at times.</p> <p>16 Q Do you know if a spit mask was applied?</p> <p>17 A I believe so.</p> <p>18 Q And when was that spit mask applied?</p> <p>19 A I'm guessing, I think we were up there about a half-</p> <p>20 hour or so, about half the time frame through,</p> <p>21 probably so like 15 minutes after we arrived up there,</p> <p>22 but I don't know exactly when.</p> <p>23 Q Did you request that the spit mask be applied?</p> <p>24 A I don't remember.</p> <p>25 Q Did you see him spitting on himself?</p>	<p style="text-align: center;">Page 19</p> <p>1 A No.</p> <p>2 Q Did you hear him say he was having difficulty</p> <p>3 breathing?</p> <p>4 A I don't remember.</p> <p>5 Q When you viewed the video in preparation for your</p> <p>6 deposition, did you see the part where you were next</p> <p>7 to Mr. Perry in the hallway?</p> <p>8 A Yes.</p> <p>9 Q Did you listen to the audio?</p> <p>10 A Yes.</p> <p>11 Q And when you listened to the audio, what did you hear</p> <p>12 him say?</p> <p>13 A I think he said, "I couldn't breathe."</p> <p>14 Q Did you see anybody assist him at that point in time?</p> <p>15 A We were all around him. But he was breathing.</p> <p>16 Q When he said he couldn't breathe, did you hear an</p> <p>17 officer tell him that, "If you're talking, you're</p> <p>18 breathing"?</p> <p>19 A I don't remember, but it's -- I've heard that term</p> <p>20 many times, but I don't remember it that night.</p> <p>21 Q Have you used that term in the past?</p> <p>22 A Yes.</p> <p>23 Q Did you use that term with Mr. Perry on the evening in</p> <p>24 question?</p> <p>25 A I don't remember.</p>
<p style="text-align: center;">Page 18</p> <p>1 A I don't remember.</p> <p>2 Q Do you know why the spit mask was applied?</p> <p>3 A I assume because he was spitting, but I don't remember</p> <p>4 him actually spitting.</p> <p>5 Q You mentioned earlier that you were positioned behind</p> <p>6 Mr. Perry with your knees against his back, or your</p> <p>7 shins against his back to try and keep him from</p> <p>8 moving, correct?</p> <p>9 A I believe so.</p> <p>10 Q Was he on the floor or on a bench when that was</p> <p>11 occurring?</p> <p>12 A He was actually -- his butt was on the floor.</p> <p>13 Q All right. How long had he been positioned on the</p> <p>14 floor while you had your shins against his back?</p> <p>15 A I'm guessing 10 minutes.</p> <p>16 Q And during that 10-minute time period, did you hear</p> <p>17 him say anything?</p> <p>18 A I know he was talking, but I don't remember exactly</p> <p>19 what he was saying.</p> <p>20 Q Was he calling out for help?</p> <p>21 A I don't remember.</p> <p>22 Q Was he saying words to the extent that, "You officers</p> <p>23 are killing me"?</p> <p>24 A It's possible.</p> <p>25 Q Did you hear him call for God?</p>	<p style="text-align: center;">Page 20</p> <p>1 Q If you have an inmate that you're responsible for and</p> <p>2 he tells you he's having difficulty breathing, is it</p> <p>3 your general response to advise that inmate that, "If</p> <p>4 you're talking, you're breathing"?</p> <p>5 A It's not a general response, no.</p> <p>6 Q What else have you said to inmates when they're --</p> <p>7 told you they're having difficulty breathing?</p> <p>8 MS. LAPPEN: Objection as to relevance.</p> <p>9 But go ahead and answer.</p> <p>10 A What -- rephrase it or repeat the question.</p> <p>11 BY MR. GENDE:</p> <p>12 Q You've told me you've used that phrase in the past</p> <p>13 when you've had --</p> <p>14 A I've heard that phrase.</p> <p>15 Q Have you used that phrase yourself?</p> <p>16 A I don't remember while I was working ever saying that</p> <p>17 to anybody.</p> <p>18 Q You've heard other officers say that?</p> <p>19 A I've heard medical people say that.</p> <p>20 Q I'm asking you if you've heard other police officers</p> <p>21 for the Milwaukee Police Department say that.</p> <p>22 A I would say, yes, but I don't remember who or -- it's</p> <p>23 just something common.</p> <p>24 Q It's something common within the Milwaukee Police</p> <p>25 Department?</p>

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<p style="text-align: center;">Page 21</p> <p>1 A That I've heard.</p> <p>2 Q And when you've heard it being said by other police</p> <p>3 officers to inmates or persons in custody that are</p> <p>4 claiming they're having difficulty breathing, how have</p> <p>5 you reacted to that?</p> <p>6 A It depends how they say it. It depends if their chest</p> <p>7 is moving, if I think they're breathing. It's hard to</p> <p>8 say. It's hard to generalize it.</p> <p>9 Q Well, just because somebody -- somebody doesn't have</p> <p>10 to stop breathing to be having difficulty breathing,</p> <p>11 do they?</p> <p>12 A I don't believe so.</p> <p>13 Q What is your training on medical emergencies as a</p> <p>14 Milwaukee police officer?</p> <p>15 A Academy training.</p> <p>16 Q And what's your training in that regard? What do you</p> <p>17 understand a medical emergency to be, sir?</p> <p>18 A Life or death.</p> <p>19 Q So if somebody is on the verge of death, only then are</p> <p>20 they suffering from a medical emergency? That's your</p> <p>21 training?</p> <p>22 A No. Can you repeat the question?</p> <p>23 Q I'm trying to understand what your training is in</p> <p>24 observing and responding to a medical emergency as a</p> <p>25 Milwaukee police officer. And you just told me life</p>	<p style="text-align: center;">Page 23</p> <p>1 Q Do you recall them doing anything?</p> <p>2 A I recall us all making sure he didn't hit his head,</p> <p>3 making sure he was upright so he could breathe,</p> <p>4 controlling him so he doesn't spit on us.</p> <p>5 Q Did he have a spit mask on at the time?</p> <p>6 A I'm guessing it happened about halfway through the</p> <p>7 process, but I don't remember if it happened before or</p> <p>8 after.</p> <p>9 Q Do you know if pressing a man's chest forward towards</p> <p>10 the ground would assist that person in breathing or</p> <p>11 make it more difficult?</p> <p>12 A I don't know that we were, but I wouldn't know that it</p> <p>13 would make a difference.</p> <p>14 Q Were you ever trained on compliance holds as a</p> <p>15 Milwaukee police officer?</p> <p>16 A Yes.</p> <p>17 Q And what was your training on compliance holds?</p> <p>18 A You want to know my whole training procedure or...</p> <p>19 Q You can give me a general overview.</p> <p>20 A A compliance hold is just to control the subject so</p> <p>21 they don't pull away from you.</p> <p>22 Q And are you aware as to whether or not those type of</p> <p>23 holds can cause difficulty for your subjects as far as</p> <p>24 breathing is concerned?</p> <p>25 A Not that I know of.</p>
<p style="text-align: center;">Page 22</p> <p>1 or death. And then I asked for some clarification as</p> <p>2 to whether only life or death, in your opinion, is a</p> <p>3 medical emergency.</p> <p>4 A If someone is having a difficulty, I guess it's not an</p> <p>5 emergency, but if it's a difficulty -- I don't</p> <p>6 understand exactly what you're asking me.</p> <p>7 Q If somebody complains that they're having difficulty</p> <p>8 breathing, could that be a medical emergency? You</p> <p>9 want people to keep breathing, right?</p> <p>10 A Absolutely. But you --</p> <p>11 Q And if somebody --</p> <p>12 A When I think of emergency, I think of urgent emergency</p> <p>13 is life or death to me.</p> <p>14 Q If somebody complains to you that they're having</p> <p>15 difficulty breathing, could that be a medical</p> <p>16 emergency?</p> <p>17 A It's possible.</p> <p>18 Q And when you heard Mr. Perry complain that he was</p> <p>19 having difficulty breathing and either yourself or</p> <p>20 another officer said to him, "If you're talking,</p> <p>21 you're breathing," what else did the police officers</p> <p>22 in his immediate vicinity do to determine whether or</p> <p>23 not he was suffering from a medical emergency at that</p> <p>24 point in time?</p> <p>25 A I don't remember.</p>	<p style="text-align: center;">Page 24</p> <p>1 Q Have you ever heard of positional asphyxia?</p> <p>2 A Yes.</p> <p>3 Q And what's your understanding in that regard?</p> <p>4 A My understanding is that you're not supposed to have</p> <p>5 somebody on their chest because of the weight of the</p> <p>6 body will give them difficulty breathing.</p> <p>7 Q Is that the only time that you're aware a subject can</p> <p>8 suffer from positional asphyxia is if they are on</p> <p>9 their chest?</p> <p>10 A Yes.</p> <p>11 Q Have you ever dealt with an inmate that suffered from</p> <p>12 positional asphyxia?</p> <p>13 A No.</p> <p>14 Q Do you know if Mr. Perry was having difficulty with</p> <p>15 positional asphyxia on the evening in question?</p> <p>16 A No.</p> <p>17 Q Do you think pressing Mr. Perry's chest forward in an</p> <p>18 effort to gain compliance was making him more</p> <p>19 comfortable or less comfortable?</p> <p>20 A I don't remember pushing his chest forward. I don't</p> <p>21 know how it's possible.</p> <p>22 Q Okay. What do you recall doing with your shins, then?</p> <p>23 A Keeping him straight, upright.</p> <p>24 Q Did you see him press forward at all while you were</p> <p>25 next to him?</p>

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<p style="text-align: center;">Page 25</p> <p>1 A If he pressed forward, it was under his power. I did 2 not push him, that I recall, forward. 3 Q Did you hear Mr. Perry say anything else on the 4 evening in question, other than what you've described 5 for me? 6 A I don't remember. I know he said plenty, but I don't 7 remember exactly what he said. 8 Q I'm not asking you exactly what he said. Give me your 9 best recollection, Officer. 10 A I don't remember. 11 Q So other than what you've described for me thus far, 12 you don't recall Mr. Perry saying anything else? 13 A No. 14 Q And when you reviewed the video clip where you were 15 next to him and Mr. Perry was seated on the ground, 16 you heard him say certain things. Did that refresh 17 your recollection? 18 A Yes. 19 Q And once your recollection was refreshed, did you 20 recall him saying anything else? 21 A I think he said he shit himself. 22 Q And when he said that, did anybody offer him any 23 assistance? 24 A Not -- I don't remember. 25 Q Did you verify whether or not he had defecated on</p>	<p style="text-align: center;">Page 27</p> <p>1 A No. 2 Q So my question to you is, not knowing whether Mr. 3 Perry was suffering from a medical emergency, what did 4 you do as a police officer with a duty to protect his 5 health, safety, and welfare do to distinguish whether 6 it was a medical emergency or you had a resistant 7 inmate? 8 MS. LAPPEN: Objection as to the form of the 9 question. 10 Go ahead, if you can. 11 A Like I said, I did what I instructed you I did. I 12 prevented him from moving around. I don't understand 13 what you're asking me. 14 BY MR. GENDE: 15 Q In the event that you determine or believe an inmate 16 under your supervision and control is suffering from a 17 medical emergency, what are you supposed to do? 18 A If I believe that he's suffering a medical emergency, 19 I'll call for paramedics or medical attention. 20 Q And if you're uncertain as to whether an individual 21 under your custody and control is suffering from a 22 medical emergency, what is your training? 23 A If I'm uncertain, I would call. 24 Q Did you hear any officer in your presence discuss 25 either with yourself, the other officers, or Mr. Perry</p>
<p style="text-align: center;">Page 26</p> <p>1 himself? 2 A No. 3 Q Did you smell anything? 4 A Not that I recall. 5 Q At any point in the evening, did you smell urine or 6 feces on Mr. Perry? 7 A No. 8 Q Did you ever observe any blood coming from any part of 9 his body before he was put into cell A3? 10 A Like I said, no. 11 Q Tell me what you did on the evening in question from 12 the moment you were next to Mr. Perry in the garage 13 until you assisted in putting him in A3 to distinguish 14 whether Mr. Perry was suffering from a medical 15 emergency or was simply being resistant. 16 A What did I do? 17 Q Yes. 18 A Like I said, I controlled him; I tried to calm him 19 down; I prevented him from being on his chest; I 20 prevented from his head moving around. 21 Q Did you know whether or not during your presence next 22 to Mr. Perry if he was suffering from a medical 23 emergency at any point in time? 24 A No. 25 Q You did not know one way or the other?</p>	<p style="text-align: center;">Page 28</p> <p>1 whether or not he needed medical attention? 2 A I don't remember. But I just remember that I know he 3 came back from the hospital. 4 Q One question at a time. Do you recall either yourself 5 or any officer in your presence discussing amongst 6 themselves or Mr. Perry whether or not he was having a 7 medical emergency? 8 A I don't remember. 9 Q Are you familiar with a paradigm shift at the 10 Milwaukee Police Department which trains officers that 11 "Struggling and resistance can indicate an immediate 12 medical emergency and not a criminal act"? 13 A No. 14 Q You never heard of that training before? 15 A No. 16 Q Do you believe that's a true statement? 17 A I believe it's possible. 18 Q Do you think it's a false statement or a true 19 statement? 20 A I believe it's true. 21 Q What, if anything, did you do on the evening in 22 question to distinguish whether Mr. Perry's struggling 23 and resistance was an immediate medical emergency as 24 opposed to a potential criminal act? 25 A I controlled him. His chest was moving, he's</p>

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<p style="text-align: center;">Page 29</p> <p>1 breathing.</p> <p>2 Q At some point, did he become unresponsive to</p> <p>3 inquiries?</p> <p>4 A I don't remember.</p> <p>5 Q Do you ever recall Lieutenant Robbins approaching Mr.</p> <p>6 Perry?</p> <p>7 A I know he was -- he was working that night. I know</p> <p>8 that I had seen him in and out and he knew of the</p> <p>9 situation.</p> <p>10 Q Did you hear Lieutenant Robbins have any conversation</p> <p>11 with Mr. Perry?</p> <p>12 A I believe he did, but I don't know exactly what he</p> <p>13 said to him.</p> <p>14 Q Generally, what do you recall, Officer?</p> <p>15 A I recall a video that was very difficult to hear what</p> <p>16 Lieutenant Robbins said. I was investigated for that.</p> <p>17 But I don't remember anything he said that night as</p> <p>18 far as my memory goes.</p> <p>19 Q Do you have memory problems generally?</p> <p>20 A No. But it's been three and a half years.</p> <p>21 Q Okay. Do you have problems with your hearing or</p> <p>22 eyesight?</p> <p>23 A No.</p> <p>24 Q Do you have any difficulties with your powers of</p> <p>25 observation?</p>	<p style="text-align: center;">Page 31</p> <p>1 Q Yes.</p> <p>2 A Yes.</p> <p>3 Q On approximately how many occasions?</p> <p>4 A I have no idea.</p> <p>5 Q More than five, less than five?</p> <p>6 MS. LAPPEN: Same objection. Relevance.</p> <p>7 Go ahead and answer.</p> <p>8 A I have no idea.</p> <p>9 BY MR. GENDE:</p> <p>10 Q More often than not when you're in court do you</p> <p>11 testify that you can't recall the events of a scene</p> <p>12 that you're investigating or responding to?</p> <p>13 MS. LAPPEN: Same objection.</p> <p>14 MR. BOHL: Object to the form of the</p> <p>15 question as argumentative.</p> <p>16 MS. LAPPEN: And I join in that objection.</p> <p>17 BY MR. GENDE:</p> <p>18 Q You can answer the question.</p> <p>19 A I don't remember. I can't answer something I don't</p> <p>20 know.</p> <p>21 Q Did you speak with any other officers in preparation</p> <p>22 for your deposition here today?</p> <p>23 A Did I speak with any officers regarding the</p> <p>24 preparation?</p> <p>25 Q Yes.</p>
<p style="text-align: center;">Page 30</p> <p>1 A No.</p> <p>2 Q Have you been trained to be observant as a police</p> <p>3 officer?</p> <p>4 A Yes.</p> <p>5 Q After this incident occurred on the evening in</p> <p>6 question, did any detectives sit down with you and</p> <p>7 inquire as to your conduct on the evening in question?</p> <p>8 A No, not that I recall.</p> <p>9 Q Do you have any understanding as to why no detective</p> <p>10 sat down with you?</p> <p>11 A I have no idea.</p> <p>12 Q Did you know that detectives were sitting down with</p> <p>13 other individuals that had contact with Mr. Perry on</p> <p>14 the evening in question?</p> <p>15 A I don't remember.</p> <p>16 Q Have you ever testified in court before?</p> <p>17 A Yes.</p> <p>18 Q And when you've testified in court, have you ever</p> <p>19 testified to the extent that you couldn't remember the</p> <p>20 events of a crime that you were investigating or</p> <p>21 responding to?</p> <p>22 MS. LAPPEN: Objection as to relevance.</p> <p>23 But go ahead and answer.</p> <p>24 A Have I ever claimed that I couldn't remember?</p> <p>25 BY MR. GENDE:</p>	<p style="text-align: center;">Page 32</p> <p>1 A No.</p> <p>2 Q When you met with Ms. Lappen, who else was present?</p> <p>3 A Officer Salinsky, Officer Bell. Officer Salinsky,</p> <p>4 Bell. I believe that's it. And myself.</p> <p>5 Q Tell me how Mr. Perry was moved from his seated</p> <p>6 position to the cell A3.</p> <p>7 A How he was moved?</p> <p>8 Q That's the question.</p> <p>9 A He was carried, I believe.</p> <p>10 Q And how was he carried?</p> <p>11 A By his shoulders and his legs.</p> <p>12 Q Where were you positioned as far as Mr. Perry being</p> <p>13 carried to the cell?</p> <p>14 A I don't remember. I think I was by his head, but I'm</p> <p>15 not 100 percent sure.</p> <p>16 Q Do you know if he was face up or face down?</p> <p>17 A I don't remember.</p> <p>18 Q Do you recall whether he was dropped or not dropped?</p> <p>19 A Not dropped.</p> <p>20 Q How do you recall that? Can't remember anything else,</p> <p>21 so how do you remember that specific --</p> <p>22 A Because I would know if he's dropped.</p> <p>23 MS. LAPPEN: Objection to the form. It's</p> <p>24 argumentative.</p> <p>25 Go ahead and answer.</p>

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<p>1 BY MR. GENDE:</p> <p>2 Q Do you know that there was an inmate who saw him being</p> <p>3 dropped before he was put into cell A3?</p> <p>4 A No, I didn't.</p> <p>5 Q You were never informed of that by any investigating</p> <p>6 officer?</p> <p>7 A I was informed by, I believe, Sue.</p> <p>8 Q Okay. I don't want to know what your attorney told</p> <p>9 you. Other than Mr. Perry being dropped before he was</p> <p>10 put into cell A3, are you aware of any other process</p> <p>11 or conduct that might have caused bleeding from his</p> <p>12 nose or ear on the evening in question?</p> <p>13 MS. LAPPEN: Objection as to the form of the</p> <p>14 question. It assumes testimony that this officer</p> <p>15 has not given, so it assumes facts not of record.</p> <p>16 Go ahead and answer.</p> <p>17 A Could you repeat the question?</p> <p>18 BY MR. GENDE:</p> <p>19 Q Are you aware of any other conduct or activity with</p> <p>20 Mr. Perry, other than him being dropped at the front</p> <p>21 of cell A3, that would result in him bleeding from his</p> <p>22 nose or his mouth or his ear?</p> <p>23 A When he was resisting.</p> <p>24 MS. LAPPEN: Objection as to the form of the</p> <p>25 question. This officer said he was not aware of</p>	<p>1 A No.</p> <p>2 Q Do you recall smelling any feces or urine at the time?</p> <p>3 A Like I said, no.</p> <p>4 Q I'm talking at the time he was being carried until he</p> <p>5 was put in the cell.</p> <p>6 A No.</p> <p>7 Q Were you aware that a custodian at PPS told an</p> <p>8 investigating officer that there were gobs of blood,</p> <p>9 spit, and feces in the cell where Mr. Perry was after</p> <p>10 he was removed from the cell?</p> <p>11 A No.</p> <p>12 Q Do you have any reason to dispute that custodian's</p> <p>13 information in that regard?</p> <p>14 A I don't even know the custodian you're talking about,</p> <p>15 but, no.</p> <p>16 Q Do you know a custodian by the name of Puechner?</p> <p>17 A No.</p> <p>18 Q How was Mr. Perry put into cell A3?</p> <p>19 A I believe he was carried in.</p> <p>20 Q Was he able to sit up on his own, was he deposited on</p> <p>21 the floor? Describe that for me.</p> <p>22 A I believe he was on the floor.</p> <p>23 Q Face up, face down?</p> <p>24 A I don't remember.</p> <p>25 Q Did anybody inquire at that time whether Mr. Perry</p>
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<p>1 anything -- anybody being dropped.</p> <p>2 With that objection, go ahead and answer.</p> <p>3 A Okay. Well, like I said, he wasn't dropped. Maybe</p> <p>4 when he was resisting us, he could have cut a finger.</p> <p>5 But I didn't see any blood.</p> <p>6 BY MR. GENDE:</p> <p>7 Q Well, I'm not asking you to speculate. I'm asking if</p> <p>8 you know, other than him being dropped, and you say he</p> <p>9 wasn't dropped, but I'm asking you, other than him</p> <p>10 being dropped, are you aware of any other conduct or</p> <p>11 activity that would have resulted in Mr. Perry</p> <p>12 bleeding from his mouth, his nose, or his ear --</p> <p>13 A No.</p> <p>14 Q -- before he was put into cell A3?</p> <p>15 A No.</p> <p>16 Q Do you have any information as we sit here today as to</p> <p>17 why an inmate would tell an investigating detective on</p> <p>18 the evening in question that he observed Mr. Perry</p> <p>19 being dropped before being put into cell A3?</p> <p>20 A Why would he say that?</p> <p>21 Q Do you have any information as to why --</p> <p>22 A I have no idea.</p> <p>23 Q Do you recall anybody asking Mr. Perry any questions</p> <p>24 as he was being carried from his seated position to</p> <p>25 the cell in A3?</p>	<p>1 needed medical assistance?</p> <p>2 A No.</p> <p>3 Q Did anybody discuss at that time as far as the</p> <p>4 officers were concerned that were in your presence</p> <p>5 whether or not Mr. Perry was suffering from a medical</p> <p>6 emergency?</p> <p>7 A I don't -- no. I don't believe so.</p> <p>8 Q Did Officer Kroes ever tell you words to the extent</p> <p>9 that he did not believe Mr. Perry should have been</p> <p>10 released from the emergency room?</p> <p>11 A Yes, I believe he said that.</p> <p>12 Q At what point in time did he say that?</p> <p>13 A It's possible when we were sitting by the bench area,</p> <p>14 but I can't remember exactly where I was.</p> <p>15 Q Were you behind Mr. Perry at that time with your shins</p> <p>16 against his back?</p> <p>17 A I believe I was.</p> <p>18 Q And how did you respond to Officer Kroes's suggestion</p> <p>19 that he did not believe Mr. Perry should have been</p> <p>20 released from the emergency room?</p> <p>21 A I don't remember what I'd said to him.</p> <p>22 Q Did you say anything?</p> <p>23 A I don't remember.</p> <p>24 Q Do you recall any other officers saying anything in</p> <p>25 response to Officer Kroes saying, "I don't think Mr.</p>

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<p>1 Perry should have been released from the emergency room?"</p> <p>2 A No.</p> <p>3 Q So here's Mr. Perry calling for help, saying he's</p> <p>4 having difficulty breathing, and Officer Kroes at some</p> <p>5 point tells all the officers in his presence, "I don't</p> <p>6 think he should have been released from the emergency</p> <p>7 room," and it was met with silence? Is that your</p> <p>8 testimony?</p> <p>9 A I don't remember.</p> <p>10 Q Did it occur to you that when Officer Kroes said he</p> <p>11 did not think Mr. Perry should have been released from</p> <p>12 the emergency room, Mr. Perry was calling for help and</p> <p>13 complaining of difficulty breathing, that at that</p> <p>14 point in time he might be suffering from a medical</p> <p>15 emergency? Did it cross your mind?</p> <p>16 A I believed he just got back from the hospital, so I</p> <p>17 didn't -- no, I didn't believe he was.</p> <p>18 Q I'm asking you if it crossed your mind that he might</p> <p>19 be suffering from a medical emergency --</p> <p>20 A No, I don't think it did.</p> <p>21 Q Was Mr. Perry able to walk to the cell under his own</p> <p>22 power?</p> <p>23 A I know he was carried, so I would say no.</p> <p>24 Q Considering Mr. Perry was unable to walk to the cell</p> <p>25</p>	<p>1 they can never suffer from a medical emergency again?</p> <p>2 A Anything can happen.</p> <p>3 Q So it's possible that Mr. Perry could suffer from a</p> <p>4 medical emergency after being cleared.</p> <p>5 A I suppose it's possible.</p> <p>6 Q Did you see Mr. Perry move at all once he was put into</p> <p>7 the cell?</p> <p>8 A We walked out. I didn't monitor him.</p> <p>9 Q The question is, did you see him move once he was put</p> <p>10 into the cell.</p> <p>11 A I don't remember.</p> <p>12 Q Do you know if his handcuffs or leg shackles were</p> <p>13 taken off?</p> <p>14 A I believe they were.</p> <p>15 Q Why do you believe they were?</p> <p>16 A Because we always pull them off when we leave the</p> <p>17 cell.</p> <p>18 Q So that's something you recall or you're just relying</p> <p>19 on standard operating procedures?</p> <p>20 A I'm just relying on standard operating. I don't</p> <p>21 remember.</p> <p>22 Q Do you know if his spit mask was removed?</p> <p>23 A I don't remember.</p> <p>24 Q What did you do after the cell door was closed?</p> <p>25 A Went back in service.</p>
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<p>1 under his own power, he'd been complaining of</p> <p>2 difficulty breathing, he had called out for help, he</p> <p>3 had stated words to the effect that he believed the</p> <p>4 officers were killing him, that the transporting</p> <p>5 officer, Kroes, expressed the opinion that he should</p> <p>6 not have been released from the emergency room, is it</p> <p>7 your testimony that it never crossed your mind that</p> <p>8 Mr. Perry may be suffering from a medical emergency?</p> <p>9 A No.</p> <p>10 Q It never crossed your mind, correct?</p> <p>11 A Like I said, I don't remember what I was thinking, but</p> <p>12 I don't believe it did, because he just was released</p> <p>13 from the hospital.</p> <p>14 Q What's that mean to you?</p> <p>15 A It means a doctor checked him.</p> <p>16 Q Okay. And does that mean to you as a Milwaukee police</p> <p>17 officer that once a doctor checks somebody they can't</p> <p>18 have a medical emergency after that? Is there some</p> <p>19 magic pill that's given?</p> <p>20 A It's possible. Anything is possible.</p> <p>21 Q So it's possible that once a doctor releases somebody</p> <p>22 they may not have a medical emergency, correct?</p> <p>23 A Correct.</p> <p>24 Q But is it your training that once an individual is</p> <p>25 released from a hospital or is medically cleared that</p>	<p>1 Q Left PPS?</p> <p>2 A Yes.</p> <p>3 Q Did you have any further contact with Mr. Perry?</p> <p>4 A No.</p> <p>5 Q Do you have any recollection of a discussion about Mr.</p> <p>6 Perry occurring at the next morning's roll call?</p> <p>7 A No.</p> <p>8 Q When were you informed that Mr. Perry passed away at</p> <p>9 CJF?</p> <p>10 A That night.</p> <p>11 Q Where were you?</p> <p>12 A I believe I was in my squad.</p> <p>13 Q Okay. Were you driving or a passenger?</p> <p>14 A I don't remember.</p> <p>15 Q Who told you that Mr. Perry expired?</p> <p>16 A It's either -- It was either Jacks or Kroes.</p> <p>17 Q And what was your response to that?</p> <p>18 A I don't remember what I said.</p> <p>19 Q Do you have any recollection of what you thought about</p> <p>20 a prisoner who was under your supervision and control</p> <p>21 earlier in the evening having passed away?</p> <p>22 A I don't remember.</p> <p>23 Q You don't remember if you thought about it?</p> <p>24 A No.</p> <p>25 Q Did you have any concern that somebody you were</p>

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11 (Pages 41 to 44)

<p style="text-align: center;">Page 41</p> <p>1 responsible for earlier in the evening passed away 2 shortly thereafter? 3 A You're asking me what exactly I remembered about that 4 night, and I don't remember it, so... I would think I 5 would -- I would ask myself why, but I don't -- I'm 6 just anticipating, or just trying to -- but I don't 7 remember. 8 Q That's what we're here to determine, what your 9 recollection of the event is. So my question to you 10 is, when you were informed by Officer Kroes or Jacks 11 that Mr. Perry had expired and you understood that 12 he'd been under your supervision and control earlier 13 in the evening, did you have any concern? Do you 14 recall having concern or not? 15 A I don't recall. 16 Q Did you recall having a discussion with your partner, 17 Santiago, about what might have happened earlier in 18 the evening? 19 A No. 20 Q Do you recall discussing with anybody after Mr. Perry 21 died what the circumstances were surrounding his 22 death? 23 A No, I don't. 24 Q When you were carrying Mr. Perry from his seated 25 position into cell A3, did he kick anybody?</p>	<p style="text-align: center;">Page 43</p> <p>1 A No. 2 Q And can you tell me why you were unable to observe any 3 of those areas of his face? 4 A Because his spit mask was on. 5 Q Okay. What is it about the spit mask that prevents 6 you from seeing his eyes, nose, or mouth? 7 A There's material over his face. 8 Q Okay. Is the material netted or is it a solid 9 material? 10 A I think it's half and half. 11 Q And what half is where? 12 A The netted part is usually over his face. But when 13 people fight, it gets moved around and they squirm or 14 they try to -- if they're noncompliant, sometimes it 15 moves around. 16 Q Do you know if Mr. Perry's spit mask had moved around? 17 A I don't remember. 18 Q So when you looked at it, did it appear to be in 19 proper position or did it look like it had moved 20 around? 21 A I don't remember exactly what position it was in, but 22 I don't remember seeing his eyes or his face. 23 Q Did you make any attempt to observe his eyes to see if 24 they were open or closed? 25 A I was busy carrying him.</p>
<p style="text-align: center;">Page 42</p> <p>1 A I know he was kicking his legs. 2 Q The question is, did he kick anybody? 3 A But I don't remember him actually directly kicking 4 anybody. 5 Q Did he strike anybody with his hands? 6 A He was cuffed. 7 Q So the answer is? 8 A So it would be no. 9 Q Was he cuffed with his hands in front of him or behind 10 him? 11 A SOP is behind, so I believe it was behind. 12 Q I want to know what you recall as opposed to SOP. 13 A It was behind his back. 14 Q And do you know if the spit mask was still affixed to 15 his face? 16 A From what point? What are you talking about? 17 Q We're talking about when you carried him from his 18 seated position and placed him on the floor of cell 19 A3. 20 A It was in position. 21 Q Could you see his eyes? 22 A No. 23 Q Could you see his nose? 24 A No. 25 Q Could you see his mouth?</p>	<p style="text-align: center;">Page 44</p> <p>1 Q So the answer is no? 2 A No. 3 Q Do you know if he was conscious or unconscious? 4 A He was conscious. He was resisting us. 5 Q He was moving. 6 A He was moving. 7 Q Was he saying anything while he was being carried? 8 A I don't remember. 9 Q Were any officers saying anything to him? 10 A I don't know what they said to him. I can't remember. 11 Q Do you recall Lieutenant Robbins saying words to the 12 effect that Mr. Perry, if he was going to act like an 13 animal, he's going to be treated like he was in 14 prison? 15 A I remember viewing the audio, but I don't remember 16 that at the time. 17 Q Was there anything that prevented you from hearing 18 Lieutenant Robbins saying that? 19 A Mr. Perry was resisting us when we were carrying him. 20 Q Did Lieutenant Robbins say that while Mr. Perry was 21 being carried or while he was sitting on the floor? 22 A Based on the video I saw by Internal Affairs, we were 23 carrying him. 24 Q Was anybody yelling at the time, other than Lieutenant 25 Robbins?</p>

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12 (Pages 45 to 48)

<p style="text-align: center;">Page 45</p> <p>1 A Not that I remember.</p> <p>2 Q Do you know Lieutenant Robbins?</p> <p>3 A Yes.</p> <p>4 Q How long have you known Lieutenant Robbins for?</p> <p>5 A Seven, eight years.</p> <p>6 Q And have you spoken to him?</p> <p>7 A Yes.</p> <p>8 Q Does he have a loud voice or a soft voice?</p> <p>9 A It varies.</p> <p>10 Q When he's attempting to gain compliance with a</p> <p>11 prisoner, have you heard him use a loud voice or a</p> <p>12 soft voice?</p> <p>13 A Are you talking about Mr. Perry, the incident with Mr.</p> <p>14 Perry when he was trying to gain compliance?</p> <p>15 Q We can talk about that in a second. I'm talking about</p> <p>16 in general.</p> <p>17 A In general?</p> <p>18 Q Yes.</p> <p>19 A I never heard him try to gain compliance with a</p> <p>20 prisoner.</p> <p>21 Q When he attempted to gain compliance with Mr. Perry by</p> <p>22 using that phrase, did he use a loud voice or a soft</p> <p>23 voice?</p> <p>24 A I could barely hear it on the audio, so I would say</p> <p>25 it's a soft voice.</p>	<p style="text-align: center;">Page 47</p> <p>1 treated, can cause significant pain or discomfort, and</p> <p>2 requires medical treatment or medication or requires</p> <p>3 constant monitoring by medical personnel." Did I read</p> <p>4 that correctly?</p> <p>5 A Yes.</p> <p>6 Q Do you have a different definition for a serious</p> <p>7 medical condition other than what's contained in the</p> <p>8 policies and procedures?</p> <p>9 A No.</p> <p>10 Q And what, if anything, did you do to determine whether</p> <p>11 or not Mr. Perry was suffering from a serious medical</p> <p>12 condition while you were in his presence, other than</p> <p>13 being resistive or noncompliant?</p> <p>14 MS. LAPPEN: Objection as to the form of the</p> <p>15 question.</p> <p>16 Go ahead and answer.</p> <p>17 A Well, he was breathing, he was at a hospital, so -- I</p> <p>18 was making sure he didn't hurt himself. So as far as</p> <p>19 I was concerned that night, knowing what I knew, I was</p> <p>20 doing everything I could.</p> <p>21 BY MR. GENDE:</p> <p>22 Q Everything you could to do what?</p> <p>23 A To make sure -- I thought he was fine. I thought we</p> <p>24 were just controlling him because he was combative,</p> <p>25 based on information I had.</p>
<p style="text-align: center;">Page 46</p> <p>1 Q Okay. I think we're going to take a five-minute break</p> <p>2 and I might have some more questions for you. Thank</p> <p>3 you.</p> <p>4 A Okay.</p> <p>5 THE REPORTER: Off the record.</p> <p>6 (Off the record)</p> <p>7 THE REPORTER: We're back on the record.</p> <p>8 BY MR. GENDE:</p> <p>9 Q I'm going to show you what we've previously marked as</p> <p>10 Exhibit No. 31, Officer, which are Milwaukee Police</p> <p>11 Department SOPs. And I direct your attention to Bates</p> <p>12 No. MPD00481. In the lower right-hand corner, you'll</p> <p>13 find the page numbers.</p> <p>14 A 481?</p> <p>15 Q Yes.</p> <p>16 A And which number?</p> <p>17 Q We're going to look at paragraph B at the top of the</p> <p>18 page. Are you familiar with these policies and</p> <p>19 procedures?</p> <p>20 A Yes.</p> <p>21 Q All right. Under paragraph B it states, "The prisoner</p> <p>22 has an injury or serious medical condition that</p> <p>23 requires immediate attention. A serious medical</p> <p>24 condition is defined as a condition that is life-</p> <p>25 threatening, can cause serious disability if not</p>	<p style="text-align: center;">Page 48</p> <p>1 Q Okay. I understand that. You believe he was</p> <p>2 combative. We've just read into the record what a</p> <p>3 serious medical condition is. It's defined as a</p> <p>4 condition that is life-threatening, can cause serious</p> <p>5 disability if not treated, can cause significant pain</p> <p>6 or discomfort, and requires medical treatment or</p> <p>7 medication. Right?</p> <p>8 A Yes.</p> <p>9 Q Okay. Now I'm asking you what you did to distinguish</p> <p>10 whether Mr. Perry was being resistive or noncompliant</p> <p>11 as opposed to suffering from a serious medical</p> <p>12 condition that was causing him pain or discomfort and</p> <p>13 required medical treatment.</p> <p>14 MS. LAPPEN: Objection as to the form of the</p> <p>15 question. Also, it's been -- parts of it have</p> <p>16 been asked and answered several times already.</p> <p>17 But go ahead and answer.</p> <p>18 A Like I keep saying, he was breathing, he was coherent.</p> <p>19 As far as I knew, I'd ask him a question or make a</p> <p>20 statement and he would respond. He was coherent. He</p> <p>21 -- just making sure he didn't hit his head. And --</p> <p>22 BY MR. GENDE:</p> <p>23 Q What led you to --</p> <p>24 A -- he was just seen by a doctor.</p> <p>25 Q What led you to believe Mr. Perry was coherent?</p>

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13 (Pages 49 to 52)

<p style="text-align: center;">Page 49</p> <p>1 A Because if I -- based on the audio, if I said 2 something, he responded back with an answer that was 3 -- made sense to me, so I thought he was coherent. 4 Q What do you recall him responding -- What do you 5 recall you saying and him responding when you watched 6 the video? 7 A I just -- I kept telling him to behave, and he would 8 stop moving his hands and flailing his arms. And I 9 said, "You just have to calm down." It's hard to 10 remember. 11 Q Well, that's what we're here to figure out today, 12 Officer. So you're telling me you believe he was 13 coherent, and I'm trying to understand your memory in 14 that regard. So do you remember him being coherent or 15 do you remember him not being coherent, or do you not 16 remember, period? 17 A I would remember if he was not coherent. If he had 18 some off-the-wall answers that, if I would say 19 something, he would come up with, I would remember 20 that. 21 Q What do you recall him saying in response to any of 22 your verbal inquiries? 23 MS. LAPPEN: Objection. That's been asked 24 and answered. 25 But go ahead and answer again.</p>	<p style="text-align: center;">Page 51</p> <p>1 A I left. 2 Q Did you see him move under his own power from when you 3 carried him down the hall until he was face down in 4 the cell? 5 A No. 6 Q Did you see his eyes open? 7 A No. 8 Q Did you hear him say anything? 9 A I believe he was talking, but I don't remember what he 10 was exactly saying. 11 Q Do you recall him saying anything? 12 A Based on audio, yes. 13 Q What do you recall him saying when you were carrying 14 him down the hallway and when you placed him face down 15 in the cell? 16 A I don't remember anything there. 17 Q That's what the question is. 18 A Okay. 19 Q So you didn't see his eyes open, you didn't hear him 20 say anything, you're unsure as to whether he could 21 walk under his own power because he was being carried, 22 and you didn't see him move when he was placed face 23 down in the cell, correct? 24 A Correct. 25 Q How do you know he was coherent during that time</p>
<p style="text-align: center;">Page 50</p> <p>1 A It's difficult to remember. But I remember him not 2 being coherent. If the answers just absolutely didn't 3 make sense to me, I would remember that. 4 Q I want to know what you recall him saying in response 5 to any inquiry you made. 6 MS. LAPPEN: Objection. That's been asked 7 and answered. 8 But go ahead and answer again. 9 A I don't remember. 10 BY MR. GENDE: 11 Q Tell me how you determined that Mr. Perry was coherent 12 as four officers were carrying him down the hallway 13 and placed him face down in the cell A3. 14 A He wasn't always being carried. He was carried for 15 about a minute. 16 Q And during that minute when he was carried, tell me 17 how you determined that he was coherent. Did you see 18 his eyes open? 19 A Well, during that minute, no, I didn't. 20 Q Did you hear him say anything? 21 A I don't remember. 22 Q Was he able to walk under his own power? 23 A He might have been, but we were carrying him because 24 he was combative. 25 Q When he was placed down, did he stand up?</p>	<p style="text-align: center;">Page 52</p> <p>1 period? 2 A I was referring to when he was in the seated position. 3 Q Okay. Now we're at a different spot. Tell me how you 4 knew he was coherent during the time period we just 5 discussed. 6 A Within that minute, I don't recall. 7 Q You don't recall if he was coherent or not coherent 8 during that time period? 9 A I remember he was moving and resisting us. Other than 10 that, I don't remember him saying anything. 11 Q We're not talking about whether he said anything. We 12 are talking about whether he was coherent when four 13 officers picked him up, carried him down the hallway, 14 and then placed him face down in the cell. We know 15 that you don't recall him saying anything, right? 16 A Yes. 17 Q We know that you don't recall seeing whether his eyes 18 were open, correct? 19 A Correct. 20 Q You don't know whether he was able to walk under his 21 own power at that point because he was being carried, 22 right? 23 A Correct. 24 Q And you didn't see him move when he was placed face 25 down in the cell, correct?</p>

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14 (Pages 53 to 54)

Page 53

- 1 A Correct.
- 2 Q So tell me how you knew whether or not Mr. Perry was
- 3 coherent during that time period.
- 4 A I don't.
- 5 Q Tell me how you know whether Mr. Perry was suffering
- 6 from a medical emergency during that time period.
- 7 A I don't.
- 8 Q Did Lieutenant Robbins ever inform either you or any
- 9 other officers in your presence of any instructions
- 10 from the emergency room as relates to Mr. Perry's
- 11 condition?
- 12 A No.
- 13 Q Were you aware as to whether or not any other officers
- 14 had been informed to keep an eye on Mr. Perry because
- 15 he'd been recently released from the emergency room?
- 16 A No.
- 17 Q If an officer said in post-death reports that you were
- 18 placing Mr. Perry in a compliance hold, would you have
- 19 any reason to disagree with that officer's statement?
- 20 A No.
- 21 Q Tell me what your training is on compliance holds.
- 22 A Well, when someone is being resistive, you basically,
- 23 while they are cuffed, you put pressure on the outer
- 24 part of their hand to make them comply.
- 25 Q Is that the compliance hold that you used on Mr.

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- 1 Perry?
- 2 A Yes.
- 3 Q You put pressure on his outer hands?
- 4 A Yes.
- 5 Q Did you use any other compliance hold with him?
- 6 A Not that I know of.
- 7 MR. GENDE: I don't think I have anything
- 8 further.
- 9 THE REPORTER: There being nothing further
- 10 for the record, this deposition is concluded at
- 11 11:31. Off the record.

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